IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WP(C).No. 14789 of 2007(I)

PETITIONERS:
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1. **P.VIJAYADAS, EX.M.L.A.,**
   MEMBER, BOARD OF DIRECTORS,
   THIRUVANANTHAPURAM DISTRICT CO-OPERATIVE BANK LTD,
   EAST FORT, THIRUVANANTHAPURAM.

2. **ADV.N.PRAKASAN,**
   MEMBER, BOARD OF DIRECTOR OF THIRUVANANTHAPURAM
   DISTRICT CO-OPERATIVE BANK LTD, EAST FORT,
   THIRUVANANTHAPURAM.

3. **ADV.G.SOBODAN, MEMBER OF BOARD OF**
   DIRECTORS OF THIRUVANANTHAPURAM DISTRICT CO-
   OPERATIVE BANK LTD., EAST FORT,
   THIRUVANANTHAPURAM.

4. **G.SHAMSUDDIN, MEMBER OF BOARD OF**
   DIRECTORS OF THIRUVANANTHAPURAM DISTRICT CO -
   OPERATIVE BANK LTD., EAST FORT,
   THIRUVANANTHAPURAM.

5. **M.A.KARIM, MEMBER OF BOARD OF DIRECTORS**
   OF THIRUVANANTHAPURAM DISTRICT CO-OPERATIVE BANK
   LTD., EAST FORT, THIRUVANANTHAPURAM.

6. **M.P.SHAJU, MEMBER OF BOARD OF DIRECTORS**
   OF THIRUVANANTHAPURAM DISTRICT CO-OPERATIVE BANK
   LTD., EAST FORT, THIRUVANANTHAPURAM.

7. **B.SASIKUMARI, MEMBER OF BOARD OF**
   DIRECTORS OF THIRUVANANTHAPURAM DISTRICT CO-
   OPERATIVE BANK LTD., EAST FORT,
   THIRUVANANTHAPURAM.

BY ADV. SRI.B.S.SWATHY KUMAR

RESPONDENTS:
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1. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
KERALA STATE, THIRUVANANTHAPURAM.

2. THE THIRUVANANTHAPURAM DISTRICT CO -
OPERATIVE BANK LTD.,
THIRUVANANTHAPURAM,
REPRESENTED BY ITS GENERAL MANAGER.

***3. N.BHASURANGAN, PRESIDENT,**
THIRUVANANTHAPURAM DISTRICT CO-OPERATIVE
BANK, THIRUVANANTHAPURAM.

***ADDL. R3 IS IMPLEADED AS PER ORDER DATED**
28/05/2007 IN IA NO. 6284/2007.

R1 BY AV. SRI. P.N. SANTHOSH, GP
R2 BY ADV. SRI. T.R.HARIKUMAR
BY ADV. SRI.P.V.BABY ---R3
SPL. GOVERNMENT PLEADER SMT. A.G.ANEETHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/06/2007, ALONG WITH WPC NO. 15849/2007 & WPC NO. 13925 OF 2007, THE COURT ON 21/06/2007 DELIVERED THE FOLLOWING:

WP(C) NO: 14789/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE JUDGMENT IN WPC NO. 7820/2007 DT. 2/4/2007.

EXT.P2. COPY OF THE NOTICE NO. ADM/ESTT/BOARD/29/2006-07 DT. 19/3/2007.

EXT.P3. COPY OF THE COMPLAINT FILED BY THE PETITIONERS BEFORE THE R1 DT. 20/3/2007.

EXT.P4. COPY OF THE JUDGMENT IN WPC NO. 10042/2007 DT. 2/4/2007.

EXT.P5. COPY OF THE JUDGMENT IN WPC NO. 11464/2007 DT. 2/4/07.

EXT.P6. COPY OF THE NOTICE NO. C.B/ (3) 15796/2007 DT. 19/4/2007 OF THE R1.

EXT.P7. COPY OF THE NOTICE NO. M.T (1) 7094/2007 DT. 21/4/2007 OF THE R1.

EXT.P8. COPY OF THE MINUTES OF THE MEETINGS DT. 20/3/2007 OF THE R2.

EXT.P9. COPY OF THE EXPLANATION BY THE 6TH PETITIONER BEFORE THE R1 DT. 30/4/2007.

EXT.P10. COPY OF THE EXPLANATION BY THE P1 BEFOR THE R1 DT. 30/4/2007.

EXT.P11. COPY OF THE NEWS ITEM IN DESABHIMANI DAILY DT. 10/4/2007.

EXT.P12. COPY OF THE NEWS ITEM IN MALAYALA MANORAMA DAILY DT. 09/04/2007.

EXT.P13. COPY OF THE NEWS ITEM IN MATHRUBHUMI DAILY DT. 10/4/2007.

EXT.P14. COPY OF THE NEWS ITEM in the HINDU DAILY DT. 10/4/2007.

EXT.P15. COPY OF THE ORDER NO. C.N. (3) 15796/2007/112 DT. 2/5/2007 OF THE R1.

EXT.P16. COPY OF THE NOTICE NO. 1/2007-08 DT. 30/4/2007.

RESPONDENT'S EXHIBITS

EXT.R3A. COPY OF THE ATTENDANCE OF THE COMMITTEE MEMBERS OF THE R9 BANK MET ON 20/3/2007.

EXT.R3B. COPY OF THE AGENDA AND THE DECISIONS OF THE COMMITTEE OF THE R9 BANK MET ON 20/3/2007.

True copy

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K. M. JOSEPH, J.

W.P.C. NOS. 14789/07,
15849/07 & 13925/07

Dated this the 21st June, 2007

JUDGMENT

The petitioners in W.P.(C) No.13925/07 are the same as the petitioners in W.P.(C) No.15849/07, i.e. the Kerala State Co-operative Hospital Complex and Centre for Advanced Medical Services Ltd. and Shri M.V. Raghavan who is the Chairman of the Board of Directors (hereinafter referred to as the Hospital Society in brief and second petitioner). W.P.(C) No.13925/07 is filed seeking a Mandamus to compel the Registrar of Co-operative Societies to appoint a Returning Officer to conduct election as per Ext.P2 Resolution forthwith and to see that the election is conducted as per Ext.P2. A Declaration is also sought that the respondent is a statutory board to appoint a Returning Officer to conduct the election as per Ext.P2 forthwith and also in view of Ext.P1 Judgment.

2. It is the case of the petitioners in the aforesaid two Writ Petitions that the Co-operative Hospital is a Society

registered under the Kerala Co-operative Societies Act, 1969 and Shri M. V. Raghavan is the Chairman of the Board of Directors the term of which is to expire on 11.7.2007. They contend that consequent upon the change in the Government in May, 2006, there were various attempts to oust the Board from the control of the Co-operative Society under the directives of the Minister for Co-operation. It is their case that on 22.12.2006 an order was passed removing the Board from office on the ground that eleven Members do not constitute the quorum. The second petitioner challenged the said order in W.P.(C) No. 34569/06 H. The said Writ Petition was allowed and the Board was reinstated in office. The Government challenged that Judgment in Writ Appeal No.187/07 and the Appeal was dismissed. The Co-operative Hospital decided by resolution to conduct election on 9.4.2007. But, the Registrar did not appoint a Returning Officer stating that the Hospital Society is a federal society and there is a gap of 158 days. Ultimately, the matter reached this Court in the form of Writ Petition No.7820/07 and

the matter was disposed of by Ext.P1 Judgment. By Ext.P1 Judgment, this Court held that it is unnecessary to decide the legal questions raised, as the petitioner submitted that a fresh resolution would be taken within two weeks from the date of the Judgment. The Judgment further shows that the Court disposed of the matter leaving it open to the Hospital Society to pass a fresh resolution for conducting the election in the event of which the Registrar of Co-operative Societies was to take steps to appoint a Returning Officer on receipt of the resolution. It was thus that the Board was convened on 13.4.2007at Delhi as one of the Members of the Board, Shri E. Ahammed who is also the Minister for External Affairs had a compound fracture of his leg and is bed-ridden in Delhi, making the holding of the meeting at Delhi unavoidable. They further contend that the Members of the Board went to Delhi meeting the expenses from their own pocket and they also decided not to claim any TA or any amount for the travel to Delhi. Ext.P2 resolution was taken by the Board in the meeting held on 13.4.2007 to hold election of 17

Members of the Board on 20.5.2007 at Rajadhany Auditorium at Thiruvananthapuram. Ext.P3 is the forwarding letter produced to show that the copy of the resolution was forwarded to the respondent on 17.4.2007 by registered post. On 18.4.2007, the Assistant Registrar in the Office of the Joint Registrar (General) came to the Office of the Society and verified the Minutes Book and found that Ext.P2 resolution was in Order and she put her signature to the effect that she had found Ext.P2 in order. It is stated that there were attempts to manipulate the Minutes of the Meeting of the Board of Directors of the Thiruvananthapuram District Co-operative Bank to show that its Vice President who is a nominee of the Hospital Society and also the elected Member of the Society has been withdrawn. This is done to make it appear that the Board of the Hospital Society has lost its quorum. There are other allegations regarding the holding of the meeting in the Writ Petition which I shall deal with when I refer to the other Writ Petitions. The complaint is that there is inaction and there is no reason to not appoint the Returning

Officer to conduct the election. It is pointed out that it is due to ulterior motives and political influence that the election is not being held.

3. In the Counter Affidavit filed in W.P.(C) No.13925/07 what is essentially stated is that Ext.P2 resolution is not in accordance with the various provisions of the Co-operative Societies Act and the Rules. Therefore, notice was issued under Rule 176 of the Kerala Co-operative Societies Rules to which Ext.R1(b) reply was given and it is stated that a decision will be taken immediately after the hearing is over on the question as to rescinding of the resolution and it is their case that a decision will be taken on the resolution to appoint the Returning Officer subject to the final decision under Rule 176.

4. W.P.(C) No.15849/07 is filed by the same petitioners challenging Ext.P14 which is the decision taken purported to be under Rule 176 of the Rules rescinding Ext.P2 resolution dated 13.4.2007 which is the subject matter in W.P.(C) No.13925/07. The further prayers in the Writ Petition are to direct the

respondent Registrar to conduct the election on the date, time and place fixed by this Court; to issue an order fixing the date, time and place of the election to the Board and also to appoint the Returning Officer to conduct the same and to issue a writ of mandamus commanding to appoint a Returning Officer to ensure that election is held before 12.7.2007 and the Body takes charge and to ensure that the duly elected Board takes charge before 12.7.2007; to direct the respondent to allow the present Board to continue in office till the duly elected Board takes charge and to declare that the Board is a statutory Board to conduct election before 11.7.2007. Of course, the main question to be decided is the validity of Ext.P14 in W.P.(C) No.15849/07 by which the resolution to conduct the election on 20.5.2007 is rescinded under Rule 176. One of the grounds on which the resolution has been rescinded under Rule 176 is that the resolution is vitiated for the reason that there was no quorum for the meeting, as the number of Members who participated in the meeting on 13.4.2007 can only be treated as ten in view of the

fact that one Shri M.P. Shaju who was the delegate of the Thiruvananthapuram District Co-operative Bank to the Hospital Society was withdrawn from the Hospital Society in the meeting of the Thiruvananthapuram District Co-operative Bank held on 20.3.2007, thus depriving the meeting held on 13.4.2007 in which Shri M.P. Shaju participated of its legal foundation as without Shri M.P.Shaju, there were only ten Members when the quorum is treated as eleven.

5. W.P.(C) No.14789/07 is filed by seven Members of the Board of Directors of the Thiruvananthapuram District Co-operative Bank (hereinafter referred to as the Bank) challenging Ext.P15 and also praying to quash the resolution after item No.13 in Ext.P8. Ext.P15 is the order of the Registrar rejecting the request of the petitioners to rescind the resolution taken on 20.3.2007 after the 12th resolution passed in the meeting on 20.3.2007. Item No.19 in the meeting held on 20.3.2007 related to the withdrawal of Shri M.P. Shaju from the Board of the Hospital Society. It is for the reason that the withdrawal of Shri

M.P. Shaju by the impugned resolution in Ext.P8 as confirmed by Ext.P15 decision of the Registrar that this Writ Petition is also connected with the other two Writ Petitions, it is being disposed of by a common Judgment.

6. Admittedly, the term of the Managing Committee of the Hospital Society is due to expire on 12.7.2007. Ext.P2 resolution dated 13.4.2007 was passed to hold meeting on 20.5.2007. The said resolution stands rescinded by Ext.P14 order in W.P.(C) No.15849/07 on essentially three grounds, namely:

(1) It is firstly the case of the Registrar that the holding of the meeting in which Ext.P2 resolution was passed at Delhi is impermissible as the area of operation of the Society is restricted to the State of Kerala. The Meeting having taken place at Delhi, the resolution passed in such a meeting could not be treated as a legally valid resolution.

(2) Secondly, Ext.P2 resolution has been passed to hold election to fill 17 vacancies. It is the case that under Section 28

(1A) the maximum number of Members in the managing Committee of a Primary Co-operative Society can only be fifteen. But, the election is proposed to be held for electing seventeen Members. The Hospital Society has federal characteristics and in such circumstances, the competent Body to election is the Election Commission. Therefore, Rule 35(A) will apply and the resolution was not forwarded to the Election Commission as required.

(3) Thirdly, there is no quorum for the meeting held on 13.4.2007 as Shri M.P. Shaju stood withdrawn by the Committee Meeting of the Bank held on 20.3.2007 and, therefore, it is impermissible. Learned Special Government Pleader, Shri A.G. Aneetha would also submit that Ext.P2 resolution stands rescinded for the reason that the Byelaws of the Hospital Society were not amended despite the Circular and instruction given by the Department.

7. As noticed, one of the grounds for rescinding Ext.P2 resolution is lack of quorum in view of the withdrawal of Shri

M.P. Shaju. At this state, I may notice the case of the petitioner in W.P.(C) No.14789/07 in some detail. Therein, seven Members of the Managing Committee of the Bank have approached this Court on the allegations which are in brief, as follows:

Right from the inception of the office of the present Government, various illegal acts were resorted to for ousting the Board of the Hospital Society. Reference is made to the allegations which I have already referred to in connection with the supersession of the Board of the Hospital Society, leading upto the passing of Ext.P2 resolution. It is the case that when all these efforts to oust the Board failed, the Ruling Party lured the President of the Bank and manipulated and forged the Minutes of the meeting held on 20.3.2007 by writing down the resolutions which were not taken or even discussed in the meeting dated 20.3.2007 or convened as per notice dated 19.3.2007, which had only 13 items in the agenda. The meeting came to an end at 2 P.M. Petitioners then came to know, it is

stated, that the President and the General Manager were manipulating the Minutes by writing down resolutions not taken in the meeting including one stating that Shri M.P. Shaju is withdrawn. This is done with ulterior motives to oust the Board of the Hospital Society. Petitioners filed Ext.P3 complaint on 20.3.2007 itself. Shri M.P. Shaju filed Writ Petition before this Court which was disposed of by Ext.P4 Judgment dated 2.4.2007, directing the Registrar to hear the Members of the Board regarding the complaint of the petitioners and also the complaint if any against the present President of the Bank after hearing him also. This Judgment was dated 2.4.2007. Later, on the same day, the learned Single Judge also disposed of W.P.(C) No.11464/07 with a direction to the Registrar to take a decision on the complaint of the other petitioners against the General Manager after hearing the Members of the Board of Directors. The Registrar issued notice dated 19.4.2007 calling for a personal hearing on 30.4.2007 and also calling for written explanations. It is while so that the first respondent also issued

notice dated 21.4.2007 to the Hospital Society as to why Ext.P2 resolution in W.P.(C) No. 13925/07 should not be rescinded. It is further stated that the cover in which the notice dated 21.4.2007 was issued would show that it was posted only on 26.4.2007 which is significant as W.P.(C) No.13925/07 is filed by the Chairman of the Hospital Society on 26.4.2007 at 11 A.M. The cover would show that the notice proposing to rescind the resolution is posted on 26.4.2007 at 7.13 hours. According to the petitioners, a back date is given to the notice dated 21.4.2007 after the copy of the Writ Petition No.13925/07 was served on the counsel of first respondent. It is pointed out that this shows malafide. Petitioners gave separate written explanation. Ext.P8 is the copy of the Minutes of the meeting held on 20.3.2007. It is stated that the petitioners have also appeared in person before the first respondent on 30.4.2007 and their Statements were also recorded. There is reference to news item appearing in the Desabhimani Daily (Ext.P11), Malayala Manorama Daily (Ext.P12), Mathrubhumi (Ext.P13) and the

Hindu Daily (Ext.P14) wherein it is stated that the Minister for Co-operation has stated that Shri M.P.Shaju has been withdrawn from the Hospital Society and the Board has lost its quorum and it should be ousted. It is pointed out that they were issued after Exts.P4 and P5 Judgments dated 2.4.2007 directing the first respondent to hear and decide the correctness of the resolution withdrawing the nomination of Shri M.P. Shaju. It is by Ext.P15 that the Registrar has rejected the complaint of the petitioners and found that there was no ground for setting aside the resolutions of the meeting held on 20.3.2007.

8. I heard the learned counsel for petitioners, Shri B.S. Swathi Kumar, the learned Special Government Pleader Smt. A.G. Aneetha, Shri P.V. Baby appearing for the President of the Bank, besides Shri T.R. Harikumar appearing for the respondent Bank. Shri B.S. Swathi Kumar, learned counsel for the petitioners would contend that the action of the respondent is illegal, arbitrary and malafide. He would contend that the sequence of events would make it clear that the intention of the

respondent who is acting under the dictate of the political party in power is to circumvent and frustrate democracy in a Co-operative Society. The whole idea according to him is to see that an elected body does not take charge before the expiry of the Hospital Society on 12.7.2007 and to invoke Section 33 of the Act and appoint an Administrative Committee. He would press into service the circumstance that the respondent unsuccessfully passed an order of supersession earlier which was admittedly interfered with by this Court. The Minister also went in Appeal before the Division Bench displaying malafides and his effort was also futile as the Division Bench affirmed the decision of the learned Single Judge, he points out. Still later, when a resolution was taken to hold the election, it was vetoed stating that it was taken on a day which was 158 days apart from the date of the expiry of the term. He pointed out that when this was challenged, the Division Bench of this Court permitted the Hospital Society to take a fresh resolution and upon the intimation of which, the respondent was directed to conduct the

election. It was in such circumstances that Ext.P2 resolution dated 13.4.2007 was taken. There is absolutely no basis to rescind the said resolution, it is pointed out.

9. As regards the first objection is concerned, namely that the meeting took place in Delhi, which is beyond the area of operation of the Hospital Society, it is contended that it was perfectly open particularly having regard to the unavoidable circumstances caused by the compound fracture suffered by Shri E. Ahammed, Minister disabling him from travelling. Shri Swathi Kumar would point out that there is no embargo against the holding of the meeting of the Committee outside its area of operation. He would submit that he would rely on a decision of this Court in Karassery Service Co-operative Bank v. Mokkam Service Co-operative Bank (2007 (1) KLT 555) wherein this Court took the view that housing the building of the Head Office outside the area of operation is not impermissible. What is prohibited is only the carrying on or canvassing business outside the area of operation. As far as the ground that by

Ext.P2 resolution, election is proposed to be held for filling 17 vacancies and election could be held only in regard to fifteen vacancies at the maximum in view of Section 28(1A), he would point out certain facts. He would submit that there was no maximum number of Members fixed originally. It is only in 2005 that the maximum number of Members were fixed as twentyfive and that is approved also by the Department. The matter engaged the attention of this Court in an earlier round of litigation wherein a Division Bench of this Court had concluded the issue saying that it is a primary society. He would, therefore, point out that it is open to the Committee to decide to hold the election to fill up vacancies in a number so long as it does not exceed the maximum number. As far as the contention that it is a Society having federal characteristics and, therefore, the request should have been made to the Election Commission under Rule 35A, he would refer to the provisions of Rule 35A to point out that there is absolutely no merit in the said contention of the respondent as even Rule 35A provides that the copy of the

resolution has to be forwarded to the Registrar who is to forward the resolution to the Commission. He would point out that the respondent is unable to make out a definite case whether the Society is to be treated as a primary Society or a federal Society and somehow the respondent is attempting to see that the election is not held. He would further submit that the main consideration should be the upholding of the democractic values and there cannot be a higher value than the holding of the elections in time, so that a democratically elected body assumes power. This is the essence of the Co-operative movement, he contends. He points out that the election could be ordered limiting the number as fifteen and the Committee has no objection in so limiting the number to fifteen. He points out that the election as proposed is to the following categories:

(1) One from Special Institutional Members.

(2) Three from Institutional Members.

(3) Thirteen from individual Members.

He would submit that the Society has no objection in two

vacancies being deducted from the category of individual Members. He would also point out that the ground urged by the learned Special Government Pleader that there was no amendment to the Byelaws and, therefore, election should not be ordered as contended by the petitioners, is meritless. He would point out in the first place that there is no authority with the respondent to direct amendment of the byelaw in this regard. He referred me to Section 12 of the Act to contend that the direction to amend the byelaw could be issued by the Registrar only for certain purposes as enumerated therein. He would therefore contend that there is no basis to contend that there was a disobedience on the part of the Hospital Society in carrying out amendment of the nature in question. He would also contend that this is not a finding which is reflected in the notice and the order. As far as the last ground which is of course integrally connected with the case set up by in the connected case filed by the Members of the Committee of the Bank, he would point out that there is absolutely no ground to find that

the resolutions including the resolution withdrawing Shri M.P. Shaju were passed. He would submit that the meeting scheduled to take place on 20.3.2007 was scheduled as per the notice dated 19.3.2007. In the notice scheduled in the meeting, there is reference only to twelve specific items to be considered at the meeting on 20.3.2007. Thereafter, of course, there is reference to "other items". Those items were not specifically enumerated. In the meeting held on 20.3.2007 which commenced at 11.30 A.M. and which was over by 2 P.M., none of the resolutions after the 12th item were taken up or discussed or passed, he contends. It is only after the meeting was over that they found that the present President and the General Manager had written down and manipulated the records to show that further decisions as shown as resolutions No.13 onwards in Ext.P8 Minutes in the connected Writ Petition were passed at the meeting. He would contend that this should be viewed in the context of the attempts to take over the democratically elected Board of the Hospital Society and the earlier round of litigation

which resulted in the attempts becoming abortive and futile. It was in such circumstances that this indirect method of withdrawing the nomination of Shri M.P. Shaju was resorted to so as to deprive the quorum, he contends. It is pointed out that the General Manager apprehending that his career will be adversely affected, joined hands with the present President. He would point out that the decision of the respondent Registrar is arbitrary and it is vitiated by political considerations and oblique motives. He points out that it is significant to note that seven Members out of thirteen Members of the Committee of the Bank have immediately filed a complaint at 3 p.m. on the same day (20.3.2007), pointing out that the resolutions which are impugned had not been passed. He would submit that this Court may consider the fact that by Exts.P4 and P5 Judgments pronounced on 2.4.2007, this Court had directed an enquiry into the complaint by the Registrar after hearing. Ext.P2 resolution is passed by the Committee of the Hospital Society on 13.4.2007. On 19.4.2007, the Registrar issues notice to decide

upon the complaint of the petitioners and posted it for hearing on 30.4.2007. It was after so issuing the notice that the Notice dated 21.4.2007 was issued calling upon the Hospital Society to explain as to why Ext.P2 resolution should not be rescinded. This resolution though dated 21.4.2007 is not despatched till 17.13 hours on 26.4.2007 on which day at 11 A.M. the Hospital Society had filed Writ Petition seeking election to be held in pursuance of Ext.P2 dated 13.4.2007. It is, therefore, pointed out that the respondent Registrar was pre-determined and biased as even though he issued notice dated 19.4.2007 fixing 30.4.2007 as the date on which hearing was to be held to decide upon the complaint which was, in fact, directed to be considered by Exts.P4 and P5 Judgments dated 2.4.2007. He has clearly expressed his findings much prior to the date of hearing on 30.4.2007 by virtue of his notice dated 21.4.2007 seeking explanation as to why Ext.P2 resolution should not be rescinded, counsel submits. Shri Swathi Kumar would further contend that seven members out of thirteen have filed Affidavits before

this court. They have filed Statements before the Registrar pointing out the true facts to the effect that the resolutions in question have not been passed and they were merely the handi-work of the present President of the Bank acting in glove with the General Manager. He refers to the political influence behind the whole affair. He further points out that it is pertinent to note that though the Notice for hearing was issued to all the Members of the Committee, none out of other six Members of the Board of the Bank either chose to appear or even file Statements to the effect that resolutions in question were in fact passed. He would, therefore, point out that when there were Affidavits and also Statements of seven Members, who in fact would clearly constitute the majority in a Meeting of thirteen, it was arbitrary to not find that the resolutions were in fact not passed. He would submit that the relevant facts have not been considered. There is non-application of mind, he contends. He would contend that a perusal of Ext.P8 Minutes would show that the second item was approval of the Minutes of the previous

meeting. He would point out that in fact in every meeting the Minutes of the previous Meeting have to be approved. Therefore, unless the Minutes of the meeting are approved in the next meeting, it could not be said, at any rate, that there were decisions which were effective in law and which were taken on 20.3.2007. He would in fact point out that though meetings were scheduled later on in the Committee of the Bank in the meeting which took place on 13.6.2007, seven Members who are, of course, the petitioners in the case, had taken the stand that the resolutions in question have not been passed on 20.3.2007. This re-enforces the contentions of the petitioners, he contends.

10. Per contra, learned Special Government Pleader supported the orders. She submits that the rescinding of Ext.P2 resolution was perfectly legal and on the grounds on which, as already mentioned. In regard to the meeting being held at Delhi, she would contend that the byelaws of the Co-operative Society has fixed the whole of State of Kerala as its area of

operation and no meeting can validly be held outside the boundaries of the area of operation of the Society as it would be against the byelaws. She refers to Rule 176 to contend that a resolution passed to hold election is also one which could be rescinded if the conditions warranting the same are established. In the facts of this case, it is pointed out that Rule 176 is indeed attracted. As regards any violation of Rule 28(1A) is concerned, she reiterates that the resolutions specifically proposes the holding of election to elect seventeen persons in three separate categories. This is in direct contravention of Section 28(1A), if the Society is treated as a primary society. Then, election can only be held with fifteen members, she contends. She submits that the contention of counsel for petitioners that it can be limited to fifteen by the Registrar is impermissible, particularly having regard to the fact that election is to be held in respect of three different categories. She would further contend that the Hospital Society has federal characteristics. The byelaw is not amended, she contends. In

regard to the challenge to Exts.P8 and P15 in the Writ Petition filed challenging the resolutions and the refusal to set aside the same, she would point out that the order deals with the contentions. She would further submit that there is no political motive and the Registrar is only acting in accordance with law and also it is further submitted that the law will take its course if elections cannot be held and this Court should not pre-empt action in accordance with law on the basis of the allegations made in the Writ Petitions. She referred to the decisions of this Court in President, Kolkkalam Service v. Meenakshy Kutty V.M. (2002 (2) KLJ 576), Aji v. State of Kerala (1995 (1) KLT 363 and Mary Mathew v. State of Kerala (2001 (1) KLT 99) to contend that there is power under Rule 176 to act in the matter. She also relied on the decision of the Apex Court in State of Punjab v. V.K. Khanna And Others (2001 (2) SCC 330) for countering the case of the petitioners based on the statements alleged against the Minister for Co-operation as contained in the newspaper items relied on by the petitioners. Shri P.V. Baby,

learned counsel for the present President of the Bank would contend that there is no case made out for interference with the order of the Registrar. There is no case of violation of the principles of natural justice, he contends. He would further submit that an appeal lies against the order of the Registrar before the Government. It is the case of respondents that in fact at the meeting held on 20.3.2007 one of the members of the Committee who is the petitioner had in fact taken leave and left the meeting on 12 Noon. Another member also took leave at 12.15 P.M. Thereafter, when the 13th item was taken up, three Members including Shri M.P. Shaju (6th petitioner) had taken the stand that the matters should not be considered in the said meeting. According to the views of the majority, it was decided to consider the same at the said meeting itself and these are all discernible from Ext.P8 Minutes also, he contends.

11. Shri Swathi Kumar, learned counsel for the petitioners relying on the decision in Union of India v. M/s. Cavalier Shipping Co. (AIR 1990 Madras 312) has pointed out

that in a case like this, it is the person who passed the order, namely the Registrar himself who should have filed Counter Affidavit while in this case it is not filed by the Registrar.

12. As far as the question as to whether Ext.P2 resolution to hold election on 20.5.2007 is vitiated for the reason that the meeting was convened at Delhi, I am of the view that having regard to the circumstances as brought out, namely the compound fracture suffered by one of the members disabling him from traveling, the holding of the meeting in the light of the impending expiry of the term of the Committee on 11.7.2007 can not be said to be illegal for the reason that it is held outside the State of Kerala which under the byelaw is stated to be its area of operation. I do not think that that by itself can be held as a ground to decline the holding of the election in time. As noticed in Karassery Service Co-operative Bank v. Mokkam Service Co-operative Bank (2007 (1) KLT 555), in a case where the Head Office is located beyond the area of operation, this Court did not veto the said decision, I also feel that particularly

in the circumstances as already mentioned, the holding of the meeting at Delhi cannot be a ground to rescind the resolution.

13. The next question is whether the impugned order is supportable for the reason that if it is treated as a primary society, the resolution is bad for the reason that the proposal is to hold the election to fill up seventeen Members contrary to the mandate of Section 28(1A) of the Act which reads as follows:

> *"28(1A): Notwithstanding anything contained in the bye-laws of a Society, the maximum number of members of the Committee shall not exceed fifteen, in the case of primary Co-operative societies, and twenty-five in the case of all other types of co-operative societies."*

The Hospital Society is having more than one District as its area of operation. It has individual and other Co-operative Societies as its Members. Therefore, it is contended that the Society has all characteristics of a federal Co-operative Society. It is the case of the State that though, on the basis of a direction, an

amendment was carried out, it was not brought into effect due to some technical reasons by the Society. The quorum should be thirteen as the number of Members is shown as twentyfive, was the case of the State. It led to the earlier round of litigation culminating in the Judgment in Registrar of Co-operative Societies v. Ahamed Ali (2007 (2) KLT 320). The words "primary society" is not defined in the Act. Section 2(1b) defines "Federal Co-operative Society" as meaning a Society having more than one District as its area of operation and having individuals and other Co-operative Societies as its members. The case of the respondent is that the Hospital Society is having the characteristics of a federal Society as its area of operation under the byelaws is the entire State of Kerala and, therefore, it has more than one District as its area of operation. It also has individual Members and Co-operative Societies as institutional members. As evident from the decision of the Division Bench in Registrar of Co-operative Societies v. Ahamed Ali (2007 (2) KLT 320), election to the Members of the Board of Directors

was held on 11.7.2002 and the total number of Members of the Board of Directors to be filled up was thirteen and it was so constituted. Thereafter six Members were nominated by the Society. It included the Managing Director as Ex-officio Member. Thus, the total number was increased to twenty. Later, the Society amended its byelaws in the year 2005. Certain clauses were added which came into effect from 29.4.2006. Later, the byelaws were amended and the maximum number of Members of the Board of Directors was fixed as twentyfive. The General Body also resolved to amend Clause (1A) of the Byelaws of the Society including the Society under the category of Federal Society. The registration to this amendment stood cancelled. Later, by virtue of the existing nominees not being able to raise the requisite share capital and also for having lost their Membership in the Board of Directors of the Society from which they were elected, the number of members was reduced to eleven. It was thereupon that the Registrar took the view that the quorum should be thirteen as the

maximum number of Members is twentyfive. It is in such circumstances that this Court approving of the decision of this Court in Subair Kunju v. Trivandrum Taluk M & P Co-op. Society (1990 (2) KLT 548) took the view that number 25 is the maximum fixed under the byelaws, but for purpose of deciding the quorum, the strength of the Board of Directors should be treated as twenty and, therefore, eleven Members constitute the quorum. In the course of the Judgment, the Division Bench proceeded to hold as follows:

> *"We are also not impressed by the argument of the learned Advocate General that the Society is a Federal Society. Facts would evidently show that the Society has already been treated as a Primary Society. In our view, that was not a ground on which the Committee sought to be removed. The only ground is lack of quorum."*

Section 28B provides that a State Co-operative Election Commission is to have superintendence and control and directions for the conduct of election to the Committees of all

Credit Apex Central and Federal Societies in the State. Rule 35A(1) provides that after the resolution is passed by the Committee, a copy of the said resolution is to be sent to the State Co-operative Election Commission by registered post within a week through the Registrar as specified in the Explanation to sub-rule (2) of Rule 35. There can be no doubt as held by a learned Single Judge of this court in Sudevan v. Joint Registrar (1992 (2) KLT 18) which, of course, was a case under Rule 35 that the Registrar has no discretion in the matter and the commencement of election cannot be delayed or defeated by inaction on the part of the Registrar to appoint a Returning Officer. The learned Single Judge further proceeded to hold that the word "may" in sub-rule, therefore, means "shall". Of course, in the Judgment reported in Registrar of Co-operative Societies v. Ahamed Ali (2007 (1) KLT 320) this Court has found that on the materials that the Society has been treated as a primary Society. The Court proceeded to hold that it is not a ground for the impugned order.

14. However, undoubtedly, there is power to rescind a resolution of a General Body or of a Committee under Rule 176, if the same is against the Act or the Rules, Byelaws or direction issued by the Department among other reasons. The case of the petitioners is that the Co-operative Society is a Primary Society. If that be so, when the resolution in question seeks election to be held in regard to seventeen vacancies, can it not be said that the said resolution is against the mandate of Section 28(1A) already referred to. Whatever be the byelaw, more than fifteen persons cannot be elected in regard to a primary Society. When the petitioners proceed on the basis that the Society is a primary Society, then I would think that this is a case where by the resolution a demand is made to conduct election contrary to the mandate of the said provision. It is to be noted that the counsel for petitioners submits that election may be ordered to be held limiting it to fifteen members and reduction may be made from the category of individual members from whom as per the resolution, thirteen are to be elected. I do not know whether

such a procedure is one which is sanctioned by law. At any rate, as I am concerned in this case with the order of the Registrar cancelling the resolution, I am called upon to consider whether the said order is legal. I cannot say that in holding that the resolution is contrary to Section 28(1a), it could be said that the order is illegal. Therefore, I accept the contention of the learned Special Government Pleader that the rescinding of the resolution in so far as it proceeds to propose the election to be held for electing seventeen persons is clearly legal.

15. The next ground on which the rejection to the resolution is supported is lack of quorum consequent upon the withdrawal of Shri M.P. Saju from the Committee of the Bank. This, of course, is a question which is inextricably connected with the issue to be decided in W.P.(C) No.14789/07. The answer to the question lies in the answer to the question whether Ext.P8 and Ext.P14 in W.P.(C) No. 15849/07 are sustainable or not. By Exts.P4 and P5 Judgments, this Court directed the Registrar to look into the complaint filed by the seven Members

of the Committee of the Bank regarding the alleged acts on the part of the President of the Bank and the General Manager. I must remind myself that this proceeding does not confer upon me any appellate jurisdiction and hence I must not overlook the limits imposed on me by the well settled principles regarding exercise of judicial review. There is no case that there is violation of the principles of natural justice in passing the impugned order. The essential contentions are that it is politically motivated, vitiated by malafides, and passed without taking note of the relevant facts which essentially consist of the statement of the petitioners, seven in number, who constitute a majority in the Board of thirteen Members to the effect that the resolutions were indeed not passed. It is to be noted that a Member ceases to be a Member under Rule 46 of the Rules when he is withdrawn. The law does not apparently require stating of any reason for withdrawing. It is undoubtedly true that the Medical College has a chequered history ever since its establishment including apparently the passing of an Ordinance,

unfruitful efforts to dissolve the Committee as evident from the decision in the Writ Petition and as confirmed in the Writ Appeal already referred to. No doubt, the statements were made by the Minister and reported in the newspapers after 20.3.2007. No doubt, petitioners rely on the statements made by the Minister to establish malafides.

16. The Registrar has proceeded to examine the matter. In the course of the order, he finds that the contention of the petitioners that the meeting held on 20.3.2007 was not preceded by the issuance of seven days' notice, is meritless. He examined the records of the earlier meetings to conclude that on several occasions in the past, meetings were convened and held without giving seven days' notice. Another contention raised by petitioners before the Registrar apparently was that in the notice convening the meeting held on 20.3.2007, there were twelve specific items to be considered in the agenda and the 13th item was “other items” which were to be discussed with the permission of the President. It is their case that the holding of a

meeting to discuss matters, particularly having policy implications could be done only if they were specifically listed in the notice as matters which would be taken up for consideration in the meeting. I find that the Registrar has proceeded to examine the matter and find from the previous meetings in which it was found that the petitioners also had participated that a number of matters in excess of specifically enumerated items in the agenda were taken up, considered and passed by the Committee. If that be so, the consideration of the matters after the 12th item in the meeting held on 20.3.2007 could not be said to be out of tune with previous practice or so unacceptable, particularly having regard to the fact that the petitioners had themselves participated in such meetings and were parties to such decisions taken by the Committee. Therefore, neither the fact that the seven days notice was given, nor the fact that matters like withdrawal of Shri M.P.Shaju were not earlier enlisted as matters to be specifically considered can militate against the validity of the resolutions after the 12th

resolution if they were passed on 20.3.2007. Case of the petitioners is that they have filed a complaint at about 3 P.M. On 20.3.2007. In the said complaint, which was of course, what was directed to be considered by this Court, it was stated as follows when translated:

> *"A meeting was held on 20.3.2007 of the Committee of the Bank pursuant to Notice dated 19.3.2007. The copy of the said Notice is produced herewith. We came to know that the President of his own will is likely to write down decisions in relation to many matters over and above the twelve items included in the agenda of that meeting. We who constitute the majority in the Committee asked the President not to take any other matter over and above the twelve items in the agenda. If the President has written down any decision against the same, the same may be examined and those decisions may be cancelled by the Registrar."*

Petitioners have given objections before the Registrar (Exts.P9 and P10). In the same, it is, inter alia, stated as follows:

> *"The Board meeting No.29/06-07 was*

> *convened on 20.3.2007 at 11/30 A.M. As per Notice. Thirteen Directors attended the meeting. The Board discussed all the twelve items.* ***The President then informed us that the meeting was over as there was no item for a discussion as per the agenda."***

It is thereafter stated that at about 2/45 P.M., they came to know that meeting was convened by the remaining five Members and immediately, the seven Directors left earlier lodged a written complaint to the Registrar, President and the General Manager. It is stated that the remaining six Directors out of thirteen do not constitute the quorum. The definite case set up in Exts.P9 and P10 Statements given on behalf of the petitioners is that the meeting was convened by the remaining five Members and then it is pointed out that written complaint was given. In Exts.P9 and P10, there is no reference to the request made in Ext.P3 complaint in W.P.(C) No.14789/07 to the President not to write down any decision over and above the listed items. Admittedly, the meeting lasted for 2-1/2 hours from 11/30 A.M. till 2 P.M. on 20.3.2007. Going by the petitioners' version, the

meeting was over after the discussion of the first twelve items, as it is the case in Ext.P9 and P10 that the President informed the petitioners that the meeting was over, as there is no item for discussion as per the agenda. I find it difficult to accept the same. I also find that the Registrar has apparently satisfied with the records maintained which would go to show that the meeting of the Committee held on 20.3.2007 did indeed consider matters after the 12th item. In this case, it is to be noted that it is not the case of the petitioners that item No.19, namely the item relating to the withdrawal of Shri M.P. Shaju was alone incorporated without the matter being discussed and passed by the Committee. On the other hand, the case of the petitioners is that all the items after the 12th item were interpolated and included in the Minutes Book and agenda book after the meeting was over. I must remind myself again that it is not as if I can sit in judgment over the matter and decide the matter as if I was deciding an Appeal after reviewing the factual findings.

17. It is undoubtedly true that the petitioners have filed

Statements before the Registrar in one voice. It is also true that in a meeting of thirteen, if all participated, the petitioners would command a majority. But then, going by the records as accepted by the Registrar, two out of the petitioners went out of the meeting and going by the Affidavit filed by the present President in his application to implead, while three objected to the taking up of the item after the 12th item, they were overruled as eight favoured the continuance of the meeting. The matter in issue in particular came to be passed by a majority of eight voting in favour, it is stated. If am to over turn the findings of the Registrar, I must accept the Statements of the petitioners as against the record. On the whole, I would think that whatever may have the reasons or the lack of reasons, or the political reasons which have weighed with the Members to withdraw Shri M.P.Shaju, I do not think that the resolutions are liable to be over turned. It is true that the Minutes are to be approved in the next meeting and on a later day all the seven petitioners have stood by their earlier stand and voted against the Minutes in

question in the meeting. But, the question is what transpired in the meeting in question. Several decisions were taken which included granting of loans. It is difficult to accept the case of the petitioners that all those decisions are to take effect only after the Minutes are approved in the next meeting. Apparently, when a resolution is carried, that fact is to be entered in what is called the Agenda Book, but the full import of the matter is to be found in the Minutes Book. The Agenda Book in this case agrees with the Minutes Book. I do not think that the petitioners have established a case of malafides as such. Having regard to the totality of facts, I would think that the petitioners have not made out a case for quashing Exts.P8 or Ext.P15. In such circumstances, I do not find any ground for interfering in the matter. The petitioners have failed to make out a case. Accordingly, the Writ Petitions stand dismissed.

K. M. JOSEPH, JUDGE

kbk.